

IN THE UNITED STATES DISTRICT
COURT EASTERN DISTRICT OF
WISCONSIN

The ESTATE OF SYLVILLE K. SMITH, by)	
Personal Representative Mildred Haynes,)	No. 17-cv-862
Patrick Smith, and Mildred Haynes, on her)	
own behalf,)	
)	
Plaintiffs,)	JURY TRIAL DEMANDED
)	
v.)	
)	
CITY OF MILWAUKEE, WISCONSIN)	
and DOMINIQUE HEAGGAN-BROWN,)	
)	
Defendants.)	

EXHIBIT 41

Gibbs Trial Testimony

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STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
BRANCH 30

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 2016-CF-005562

DOMINIQUE L. HEAGGAN-BROWN,

Defendant.

JURY TRIAL - ALL DAY

JUNE 16, 2017

HON. JEFFREY A. CONEN,
Circuit Court Judge,
presiding.

LAURELL L. BRESLOW-COLLIEN, RPR
Official Court Reporter

CHARGES:

Count 1: First-Degree Reckless Homicide

A P P E A R A N C E S:

JOHN T. CHISHOLM, District Attorney, and BENJAMIN LINDSAY, Assistant District Attorney, appeared on behalf of the State of Wisconsin.

STEVEN R. KOHN and JONATHAN C. SMITH, Attorneys at Law, appeared on behalf of the Defendant.

DOMINIQUE L. HEAGGAN-BROWN, Defendant, was present in custody.

ALSO PRESENT: J. Michael Damarco, Investigator

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I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID'D</u>	<u>RCV'D</u>
53	DCI Report of the Heaggan-Brown Interview	11	42
54	Autopsy Protocol	46	56
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID'D</u>	<u>RCV'D</u>
60	Photograph	49	54
61	Photograph	51	54
62	Bullet Recovered at Autopsy	53	56
63	Ballistics Report	61	68
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69	Box Containing Test-Fired Bullets and Cartridge Cases	62	68
74	Photograph	51	52

1 TRANSCRIPT OF PROCEEDINGS (9:47 a.m.)

2 THE CLERK: Case No. 16-CF-5562, State
3 of Wisconsin vs. Dominique L. Heaggan-Brown,
4 first-degree reckless homicide. Matter is here
5 for a jury trial. Appearances.

6 MR. CHISHOLM: John Chisholm on behalf
7 of the State; Ben Lindsay assisting. Good
8 morning, Your Honor.

9 THE COURT: Good morning.

10 MR. SMITH: Good morning, Your Honor.
11 Attorneys Jonathan Smith and Steven Kohn on behalf
12 of Mr. Heaggan-Brown who is present.

13 THE COURT: All right. Good morning.
14 We had a -- excuse me. I think we have a
15 stipulation on a handful of issues that we are
16 going to try to wrap up with the jury. Do we want
17 to make a record of that before the jury comes
18 out?

19 MR. SMITH: Sure.

20 MR. LINDSAY: Sure, Your Honor. The
21 State is submitting a stipulation signed by
22 Mr. Chisholm, Mr. Smith, and Mr. Heaggan-Brown as
23 Exhibit No. 73. It reads as follows that: "The
24 parties agree and stipulate that at or about
25 5 p.m. on August 13th, 2016, forensic investigator

1 Crystal Green, an employee of the Milwaukee County
2 Medical Examiner's Office, arrived at 3216 North
3 44th Street in the city and county of Milwaukee.
4 There she examined the condition and took custody
5 of the body of the decedent, Sylville K. Smith.
6 Investigator Green facilitated the Milwaukee Fire
7 Department med unit's transportation of
8 Mr. Smith's body to the medical examiner's office.
9 The Milwaukee Fire Department med unit was
10 escorted by the Wisconsin Department of Justice,
11 Division of Criminal Investigation, and arrived at
12 the medical office -- medical examiner's office in
13 the same condition."

14 Pursuant to this stipulation, the State
15 will not be calling additional witnesses to
16 establish either the chain of custody of the
17 decedent's body or the condition of the body when
18 it arrived at the medical examiner's office.

19 THE COURT: All right. And so that is
20 agreed to, Mr. Smith?

21 MR. SMITH: It is.

22 THE COURT: And Mr. Heaggan-Brown,
23 you're in agreement?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. I appreciate

1 it. Thank you.

2 So are you going to read that to the
3 jury since that actually goes to your part of the
4 case?

5 MR. LINDSAY: I will read it.

6 THE COURT: And I will advise the jury
7 that this will be conclusive proved.

8 MR. LINDSAY: I will read that right
9 before the medical examiners and formally move it
10 in at that time.

11 THE COURT: That's fine. Perfect. So
12 the stipulation has the approval of the Court.

13 And anything else we need to do?

14 MR. CHISHOLM: Nothing from the State,
15 Judge.

16 THE COURT: All right. So medical
17 examiner first?

18 MR. CHISHOLM: Actually, we're going to
19 start with Special Agent Ray Gibbs who's in court
20 right now.

21 THE COURT: Perfect. And then medical
22 examiner and Mr. Simonson and then you're done?

23 MR. CHISHOLM: That's correct.

24 THE COURT: Okay, very good. So we
25 should be done by noon.

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MR. CHISHOLM: I believe so.

THE COURT: Let's bring them in.

THE BAILIFF: All rise for the jury.
(The jury entered the courtroom.)

THE BAILIFF: You may be seated.

THE COURT: Everyone's comfortable and we're all set. All right. Good morning, ladies and gentlemen. Hope you had a good evening and everything went well. We're still very much on track to be done today with a good portion of the trial, and then we have one witness that will be available for testimony on Monday, which will take us into Monday, and then again instructions and argument hopefully by Monday afternoon, and then deliberations until a verdict's reached. So we're still on track.

Your next witness.

MR. CHISHOLM: Thank you, Your Honor. Good morning, ladies and gentlemen. The State's first witness this morning is Special Agent Raymond Gibbs.

THE COURT: All right. Could you stand, please?

AGENT GIBBS: Certainly.

THE COURT: Raise your right hand.

1 **SPECIAL AGENT RAYMOND GIBBS**, called as
2 a witness herein, being first duly sworn, was
3 examined and testified as follows:

4 THE COURT: Have a seat, please. Tell
5 us your name; spell your first and last name,
6 please.

7 THE WITNESS: First name is Raymond,
8 R-A-Y-M-O-N-D, last name is Gibbs, G-I-B-B-S.

9 THE COURT: All right. You may
10 proceed.

11 MR. CHISHOLM: Thank you.

12 **DIRECT EXAMINATION**

13 BY MR. CHISHOLM:

14 Q What do you do for a living, Agent Gibbs?

15 A I am a special agent with the Wisconsin Department
16 of Justice, Division of Criminal Investigation.

17 Q And when did you first start working with the
18 Department of Justice?

19 A November of 2015.

20 Q And prior to November of 2015, you had extensive
21 law enforcement experience; is that correct?

22 A That's correct.

23 Q Can you describe what that was?

24 A I was employed for 25 years with the Milwaukee
25 Police Department. I retired in 2015 as a

1 homicide lieutenant.

2 Q And in the course of your work, particularly in
3 the latter years as a homicide lieutenant, you
4 directly participated in a large number of
5 homicide investigations and supervised those as
6 well; is that correct?

7 A That's correct.

8 Q Were you working with the Department of Justice on
9 August 13 of 2016?

10 A Yes, I was.

11 Q And as part of that assignment, were you asked to
12 assist in the investigation of a police
13 officer-involved shooting that resulted in the
14 death of Sylville Smith?

15 A Yes, I was.

16 Q And what was your role?

17 A I interviewed numerous people to include some
18 officers from the Milwaukee Police Department
19 regarding the incident.

20 Q And in particular, on August 15 at approximately
21 11:00, did you have the opportunity to interview
22 Mr. Heaggan-Brown?

23 A Yes, I did.

24 Q And prior to that occurring, did you have an
25 opportunity to discuss the circumstances or the

1 conditions of Officer Heaggan-Brown talking to you
2 with his attorneys?

3 A Yes, I did.

4 Q And do you recall, can you describe to the jury
5 what -- what that conversation or discussion was
6 about?

7 A Well, the attorneys had been at DCI Milwaukee
8 office the day after the incident, I think that
9 was on the 14th, with Officer Voden, who was on
10 scene at the time, and we had -- we had spoken
11 with Officer Voden, and afterwards we had
12 discussed whether or not Officer Heaggan-Brown was
13 going to give a statement, and if the attorneys
14 were going to be allowed to look at the body cam
15 video that Officer Heaggan-Brown and Officer
16 Malafa were wearing at the time of the incident.

17 Q Then after that discussion did you allow them an
18 opportunity to review the body cam videos from
19 both Officer Heaggan-Brown and from Officer
20 Malafa?

21 A They were allowed to, yes.

22 Q And describe those circumstances.

23 A Myself and my partner Special Agent Ricardo
24 Tijerino accompanied them into a room, and we
25 basically set the videos up on a computer, and we

1 were in the room with them and they watched each
2 of the videos.

3 Q How often did they watch them?

4 A I believe twice each one.

5 Q And then after that, you had an opportunity to
6 meet them again on the 15th; is that correct?

7 A That's correct.

8 Q And at that time, you had the opportunity then to
9 discuss the case with Officer Heaggan-Brown?

10 A Yes, I did.

11 Q I'm going to show you what has been marked as
12 Exhibit No. 53, and ask if you recognize this
13 exhibit.

14 MR. CHISHOLM: May I approach, Judge?

15 THE COURT: You may.

16 MR. CHISHOLM: I've already shown this
17 to counsel.

18 THE COURT: Okay.

19 BY MR. CHISHOLM:

20 Q Agent Gibbs, do you recognize that document, and
21 if you need, you can take some time to look at it?

22 A I do recognize this.

23 Q And what is that?

24 A This is a report, a DCI report regarding the
25 interview that we took with Officer Heaggan-Brown.

1 Q So this would have been approximately 48 hours
2 roughly, a little bit under 48 hours after the
3 incident occurred?

4 A I believe so.

5 Q And the -- the circumstance of that interview took
6 place in your offices; is that correct?

7 A That's correct. We have a conference room, so we
8 were able to sit everyone comfortably and discuss
9 the incident.

10 Q And approximately how long did the interview take?

11 A Roughly two hours.

12 Q And would that have included some breaks at any
13 point in time?

14 A Yes.

15 Q At the conclusion of that interview, you
16 summarized the conversation. I assume you would
17 have taken notes during that, and at some point in
18 time, you summarized the conversation that you had
19 with Officer Heaggan-Brown and his attorneys and
20 then put that into a Word document of some form;
21 is that correct?

22 A That's correct.

23 Q And is that what you're looking at with this
24 exhibit?

25 A Yes.

1 Q In addition to that, on a follow-up date a week or
2 so later, you again met with Officer Heaggan-Brown
3 and his attorneys; is that correct?

4 A Yes, we did.

5 Q And what did you do at that time?

6 A We showed him the report and had him look at
7 everything to make sure that the report was what
8 we had discussed at the initial interview.

9 Q And what was his response to that?

10 A Looked it over and said the report was correct.

11 Q Thank you. And based on that, again you -- if he
12 had made any changes, you would have modified the
13 document and allowed him to look at it again; is
14 that correct?

15 A Correct.

16 Q But he didn't do so; so what you have before you
17 is an accurate summary of the conversation that
18 you had with Officer Heaggan-Brown on the 15th?

19 A Yes, sir.

20 Q Thank you. I'm going to ask for you to go through
21 that document and do it line by line, paragraph by
22 paragraph and just inform the jury of your
23 discussion with Officer Heaggan-Brown.

24 A Okay. "SA Gibbs and SA Taylor began the interview
25 by identifying themselves as special agents with

1 the Department of Justice, Division of Criminal
2 Investigation, DCI, to Officer Heaggan-Brown and
3 displayed their credentials and badges to him.
4 Heaggan-Brown was advised that his giving a
5 statement to the special agents was completely
6 voluntary on his part. Heaggan-Brown was told by
7 SA Gibbs that he was not required to give a
8 statement and was further advised by Gibbs that he
9 could stop answering questions at any time he
10 desired as well as confer with his attorneys prior
11 to answering any question directed at him by the
12 DCI agents.

13 "SA Gibbs asked Heaggan-Brown if he
14 understood that he was not required to give DCI a
15 statement, and he stated that he understood. SA
16 Gibbs asked Heaggan-Brown if he wished to make a
17 statement to SA Gibbs and SA Taylor and
18 Heaggan-Brown stated that he wished to make a
19 statement. SA Taylor advised Heaggan-Brown that
20 DCI had the ability to audio and/or video record
21 his statement. Heaggan-Brown stated that he did
22 not want the statement to be recorded."

23 Q If I could stop just briefly there. There's a
24 mandate on any criminal investigation in the state
25 of Wisconsin that suspects are allowed the right

1 to have their statement recorded, but it's not --
2 it's not mandatory if they don't want to, and
3 particularly if their attorneys are present at
4 that time; is that correct?

5 A Correct.

6 Q Thank you. Please continue.

7 A "Police Officer Dominique Heaggan-Brown stated he
8 was appointed to the Milwaukee Police Department
9 as a police aide July 26th of 2010. Police
10 Aide [sic] Heaggan-Brown stated that he was
11 appointed to the rank of Milwaukee police officer
12 on August 13th, 2013, and was assigned to the
13 early shift at District 7, with regular hours of
14 duty from 4 p.m. to 12 a.m. Heaggan-Brown was a
15 member of the bicycle patrol unit for almost one
16 year and successfully completed a training course
17 put on by the Milwaukee Police Training Academy to
18 become part of the bicycle unit. Heaggan-Brown
19 also held certification to carry a taser and
20 attended an FBI-conducted training course on the
21 characteristics of an armed gunman.

22 "On Saturday, August 13th, 2016,
23 Heaggan-Brown was attired in his full Milwaukee
24 police bicycle uniform, which consisted of dark
25 blue bicycle shorts and a dark blue polo-style

1 short sleeve shirt. The shirt had a Milwaukee
2 Police Department patch on the left sleeve,
3 embroidered Milwaukee police badge on the left
4 chest, and his last name sewn onto a Velcro strip
5 which was attached to the right chest of the
6 shirt. He also wore a ballistic vest underneath
7 the uniform shirt.

8 "Heaggan-Brown was equipped for duty on
9 August 13th, 2016, with his full complement of
10 Milwaukee police equipment, which included his
11 duty belt. On the duty belt Heaggan-Brown carried
12 the following equipment: A double magazine am" --
13 I'm sorry -- "ammunition pouch containing two
14 handgun magazines. Each magazine was loaded with
15 14 unfired .40 caliber cartridges; a taser carried
16 in a holster; a medium-sized flashlight carried in
17 a pouch; an empty baton holster; a two-way radio
18 with holder. The radio was equipped with an
19 extended cord and microphone, which was attached
20 to the left shoulder of Heaggan-Brown's uniform
21 shirt. A pair of handcuffs in a pouch; a second
22 pair of handcuffs in a holder; a Smith & Wesson
23 M&P .40 caliber pistol loaded with 14 unfired .40
24 caliber cartridges and a magazine seated in the
25 magazine well of the pistol, and an additional

1 unfired .40 caliber cartridge in the chamber of
2 the pistol; an extra flashlight in a pouch; OC
3 spray in a pouch. In addition to the
4 aforementioned equipment, P.O. Heaggan-Brown wore
5 a body camera with a collar mount.

6 "P.O. Heaggan-Brown was asked by SA
7 Gibbs why there were only 14 cartridges in his
8 magazines. P.O. Heaggan-Brown responded that the
9 Milwaukee police officers were told at the
10 training academy to not force the 15th cartridge
11 into the magazine because it would potentially
12 damage the magazine and lead to a malfunction of
13 the pistol. Officers were instructed to insert
14 the magazine with 14 cartridges into the magazine
15 well of the pistol and charge the pistol, placing
16 a cartridge into the chamber. An additional round
17 would then be placed into the magazine after
18 removing it from the magazine well of the pistol.
19 After placing the 14th cartridge into the
20 magazine, the magazine would be replaced into the
21 magazine well of the pistol. P.O. Heaggan-Brown
22 loaded his pistol in this fashion."

23 Q If I could just ask you to take a short break from
24 relaying this information.

25 A Could I -- could I cut in real quick? Could I get

1 a glass of water?

2 Q Sure.

3 A Dry mouth.

4 Q Bottle of water?

5 A Yeah, that will work. Thank you. Thank you.

6 Q Because I was just going to show you something
7 briefly. If you would just briefly take a look at
8 what's been marked as Exhibits 41 and 40.

9 MR. CHISHOLM: Can I approach, Your
10 Honor?

11 THE COURT: You may.

12 THE WITNESS: Okay.

13 BY MR. CHISHOLM:

14 Q Do you recognize those items?

15 A I know what they are. They are magazines with
16 unfired .40 caliber cartridges.

17 Q And evidence has already been presented that
18 indicates that those are the extra magazines of
19 Officer Heaggan-Brown on August 13, and there's 14
20 rounds that are outside of the magazine at this
21 point in time.

22 The point I want to discuss with you is
23 that -- is that even though the magazines -- the
24 extra magazines have 14 rounds, the weapon itself
25 that would have been in the officer's holster

1 would have contained 15 rounds; is that correct?

2 A Correct.

3 Q And again, would this have been consistent even
4 with your previous experience as a Milwaukee
5 police detective, a Milwaukee police lieutenant?

6 A Yes.

7 Q And that's consistent with the training that's
8 received?

9 A That's correct.

10 Q And so -- so any discharge from the weapon
11 itself -- and what's the purpose of asking these
12 questions, I guess, is what I would like to know.

13 A We want to know how the weapon is loaded because
14 it's going to help explain what was found at the
15 scene, and if we know how many unfired cartridges
16 are in the pistol before he fires, it will explain
17 how many are now in there, you know, when we
18 recover the pistol.

19 Q Thank you very much. Please continue.

20 A Okay. I should have marked my spot, but I found
21 it. Okay. "On August 13th, 2016, P.O.
22 Heaggan-Brown reported to work at District 7 at 2
23 p.m. to work an overtime funded traffic detail for
24 two hours prior to his shift. Prior to coming to
25 work, P.O. Heaggan-Brown got six to seven hours of

1 sleep the previous night, which was more than his
2 usual amount. He took no medications prior to
3 this shift and had not had any alcohol for two
4 weeks prior to this shift. He was well rested and
5 felt good when he arrived at work on August 13th,
6 2016, at 2 p.m."

7 Q And again, if I could just ask, What is the
8 purpose of a question like that in the context of
9 an officer-involved shooting?

10 A Just to kind of establish the condition of the
11 officer, did he work 25 straight hours, was he
12 suffering from exhaustion, did he have court, was
13 he on medications that may have possibly caused
14 issues.

15 Q Thank you.

16 A "P.O. Heaggan-Brown explained that the
17 instructions for the overtime detail was to
18 target" -- I'm sorry -- "to target high crime and
19 drug areas and to perform traffic stops and be
20 highly visible. He was scheduled to ride with a
21 partner during this detail but his partner did not
22 come in for the detail.

23 "P.O. Heaggan-Brown signed out MPD
24 marked squad 124, a fully marked Tahoe with red
25 and blue emergency lights, a siren, and a dash

1 camera. P.O. Heaggan-Brown noted that two other
2 bicycle officers, P.O. Malafa and P.O. Voden, were
3 also signed up for the detail, so the three
4 officers decided to participate in the detail
5 together but in two separate squad cars. P.O.
6 Heaggan-Brown stated that P.O. Malafa and P.O.
7 Voden drove a gray unmarked squad car, and both
8 were also in Milwaukee Police Department bicycle
9 officer uniforms.

10 "P.O. Heaggan-Brown was unable to log
11 onto the squad computer on Squad 124. He asked
12 P.O. Voden to try and log onto the computer of
13 Squad 124 as well, and P.O. Voden could not do so
14 either. P.O. Heaggan-Brown decided that he would
15 put the two-way radio on the squad on channel
16 OPS 3 and his handheld two-way radio on the
17 District 7 channel."

18 Q If I could again just take a brief break.
19 Evidence has been presented from both Officer
20 Malafa and Mr. Heaggan-Brown's body cameras but no
21 evidence has been received with respect to squad
22 videos. Is there -- Does this explain that in any
23 fashion to you?

24 A It could because when you log into the squad, you
25 have to log onto -- there's an on-board computer

1 inside the squad car, and when you log on, it
2 basically identifies you through the computer into
3 the telecommunicator and a lot of stuff that works
4 on the squad works through the computer, on the
5 on-board computer.

6 Q So on that day if he was unable to log on, then
7 it's likely that the on-board dash camera would
8 not have been operating as well?

9 A It's possible. I'm not -- I'm not great with
10 the --

11 Q You don't have personal knowledge about that but
12 that's -- that's --

13 A Yeah.

14 Q -- a possible explanation?

15 A It's possible, yes.

16 Q Thank you. Please continue, I think starting the
17 third paragraph on page 3.

18 A Okay. "P.O. Heaggan-Brown stated that he, along
19 with P.O. Malafa and P.O. Voden, performed
20 approximately eight or nine traffic stops during
21 the detail and kept in constant radio contact with
22 each other. They concentrated on the area of 76th
23 Street from Center to Capitol Drive and issued
24 numerous warnings to the people they stopped.
25 P.O. Heaggan-Brown stated that the orders for the

1 detail were to show a police presence in the areas
2 they worked, not just to write people tickets.

3 "At approximately 3:15 p.m. P.O.
4 Heaggan-Brown and P.O. Malafa and P.O. Voden
5 decided to start driving towards the District 7
6 station to be there in time for roll call at 3:48
7 p.m. P.O. Heaggan-Brown stated while driving
8 towards District 7, P.O. Malafa got on the radio
9 and suggested they drive through the area of North
10 Sherman Boulevard and West Burleigh Street. P.O.
11 Heaggan-Brown explained this area was known by the
12 three officers as an area of high crime and drug
13 activity. P.O. Heaggan-Brown stated they had made
14 numerous arrests resulting in drugs and weapon
15 recoveries in the area. P.O. Heaggan-Brown stated
16 the area was a regular part of their bicycle
17 patrol route due to the high amount of drug
18 activity, shootings, and other felony incidents.

19 "P.O. Heaggan-Brown drove his squad car
20 east on Burleigh Street, and as he approached
21 North 49th Street, he broadcast on OPS 3 that he
22 wanted to check the area of 44th Street and West
23 Burleigh. P.O. Malafa responded on OPS 3 that he
24 and P.O. Voden were directly behind him. P.O.
25 Heaggan-Brown explained that North 44th Street and

1 West Burleigh was also an area with numerous drug
2 dealing complaints. Heaggan-Brown recalled being
3 approached by residents on that block in the past
4 who complained of vehicles with out-of-state
5 plates coming into the area to buy drugs. The
6 area was a residential area with numerous elderly
7 residents, and P.O. Heaggan-Brown stated that he
8 had the opportunity to speak with several
9 individuals who lived in the area and he was
10 familiar with who lived on the block and who did
11 not.

12 "P.O. Heaggan-Brown went on to explain
13 that as bicycle officers, their assignment was to
14 get to know the people in the neighborhoods they
15 patrol. P.O. Heaggan-Brown stated if the officers
16 saw people on the street, they were to make
17 contact with them and let the citizens know they
18 were in the area. P.O. Heaggan-Brown stated they
19 would attempt to find out from the residents what
20 things were occurring in their neighborhoods and
21 try to address them.

22 "P.O. Heaggan-Brown stated he, P.O.
23 Malafa, and P.O. Voden had made numerous field
24 interviews and arrests for drug possession in the
25 area of 44th Street and Burleigh, and many of the

1 people stopped told them that the drug dealers on
2 North 44th Street drove rental cars with
3 out-of-state plates and sold drugs from the rented
4 vehicles.

5 "P.O. Heaggan-Brown stated based on his
6 training and experience, he knew that rental cars
7 were usually newer model vehicles, often with
8 out-of-state registration plates. Heaggan-Brown
9 added that approximately one week earlier he, P.O.
10 Malafa, P.O. Voden, and P.O. Wellman had made a
11 foot pursuit of a suspect in the area of 3109
12 North 44th Street. P.O. Heaggan-Brown added" --
13 I'm sorry -- "stated during the course of the foot
14 pursuit an arrest was made and a handgun was
15 recovered.

16 "P.O. Heaggan-Brown stated he turned
17 his squad north on North 44th Street from West
18 Burleigh, and as he approached the intersection of
19 North 44th Street at West Auer, he saw a black or
20 dark blue newer car with Minnesota or Iowa plates
21 parked north of Auer on the east side of North
22 44th Street. P.O. Heaggan-Brown could not say
23 what state the registration plates were from with
24 certainty, but knew that they were not Wisconsin
25 plates because of the light blue border at the top

1 of the plate. P.O. Heaggan-Brown knew Wisconsin
2 registration plates did not have that feature.

3 "P.O. Heaggan-Brown stated he was still
4 south of Auer, approaching the stop sign when he
5 saw the dark vehicle. Heaggan-Brown noted the car
6 was parked too far from the curb and believed the
7 vehicle to be approximately 15 inches from the
8 curb. P.O. Heaggan-Brown stated that he knew the
9 maximum distance a vehicle could be parked from
10 the curb was 12 inches. Heaggan-Brown radioed
11 P.O. Malafa and P.O. Voden on OPS 3. He told them
12 of the illegally parked vehicle with the
13 out-of-state registration plates. P.O.
14 Heaggan-Brown stated there were no cars parked
15 behind the dark vehicle, and he believed the
16 vehicle was parked three houses north of Auer.

17 "P.O. Heaggan-Brown continued to watch
18 the dark vehicle, and saw a heavyset black male
19 wearing a white shirt exit the front passenger
20 seat. Heaggan-Brown stated that the black male
21 appeared to be leaning into the car with his body
22 between the open front passenger door and the
23 passenger compartment of the vehicle. P.O.
24 Heaggan-Brown stated the black male's head was
25 above the roof line of the car. Heaggan-Brown saw

1 the man look at his marked MPD police squad, then
2 quickly duck under the roof line of the vehicle.
3 The man leaned into the passenger compartment,
4 then quickly turned and began to briskly walk away
5 from the dark vehicle.

6 "P.O. Heaggan-Brown stated that the
7 heavysset black male's actions were indicative of
8 someone secreting drugs or weapons inside of the
9 vehicle and preparing to run from the police.
10 P.O. Heaggan-Brown suspected the black male could
11 be alerting other drug dealers that the police
12 were nearby. Heaggan-Brown added that he, Malafa,
13 and Voden were often involved in foot pursuits
14 with people who behaved in the same manner that
15 the heavysset black male behaved. P.O.
16 Heaggan-Brown stated that he expected the heavysset
17 black male to run from the officers.

18 "P.O. Heaggan-Brown proceeded through
19 the intersection of North 44th Street and Auer and
20 tried to approach the dark vehicle and the
21 heavysset black male quickly in the hopes they
22 could reach him before he ran away from them.

23 "Heaggan-Brown believed he activated
24 the emergency red and blue lights of his squad car
25 and pulled alongside the dark vehicle. He parked

1 the squad approximately three feet to the west of
2 the dark vehicle and had the front of his squad a
3 few feet in front of the front of the dark
4 vehicle. P.O. Heaggan-Brown noted that he left
5 room for the dark vehicle to pull away and he did
6 not block it in.

7 "Heaggan-Brown stated as he pulled
8 alongside of the dark vehicle, he saw that someone
9 was seated in the driver seat. Heaggan-Brown knew
10 that Malafa and Voden stopped their squad car
11 behind his squad. P.O. Heaggan-Brown tapped his
12 body camera to activate it as he exited his squad
13 car. He moved quickly to the front of his squad
14 car and turned to the east and heard P.O. Malafa
15 yell, quote, He's running, end quote, and heard a
16 car door slam to the south of his location at the
17 front of the squad. P.O. Heaggan-Brown stated
18 that he believed someone hit the emergency on
19 their radio at this time."

20 Q Now, if I could stop you just briefly. Go ahead
21 and take a drink.

22 A Thanks.

23 Q At this time in your interview with Officer
24 Heaggan-Brown, did he indicate that he had drawn
25 his weapon at the time that he got out of his

1 vehicle?

2 A No.

3 Q Thank you. Please continue.

4 A "P.O. Heaggan-Brown stated as he was crossing the
5 front of his squad car, he saw a black male run
6 north between his squad car and the dark vehicle.
7 P.O. Heaggan-Brown described the black male as
8 having a caramel complexion, braided hair, and a
9 thin build."

10 Q If I can stop you at this moment as well.
11 Throughout this report there is the description of
12 individuals as black male, as heavysset black male.
13 Are we making a distinction at this point in time;
14 is he talking about a separate individual?

15 A Yes.

16 Q And just since this description is used throughout
17 the remainder of the report, can you explain when
18 you're writing down this description, are you
19 intending to depersonalize or dehumanize Sylville
20 Smith in this report, or explain why that
21 terminology is used throughout this report.

22 A Certainly. I'm -- I'm in no way trying to
23 dehumanize anyone. What I was trying to do was
24 ensure that whoever looks at and reads this report
25 knows exactly who's being talked about. I'm -- I

1 refer to P.O. Heaggan-Brown probably 100 times in
2 this report, and it's actually very repetitive and
3 I normally wouldn't write that way, but I want to
4 make sure that that reader knows that if it's P.O.
5 Heaggan-Brown saying something, that that's who's
6 saying it. The same with I mention Malafa and
7 everyone else. I'm very specific how I mention
8 them. How P.O. Heaggan-Brown was familiar with
9 this person in terms of this incident was his
10 description of him as being the black male that he
11 pursued, or the black male with the caramel
12 complexion that had braids. At no time did he say
13 the person's name. So for me to specify as you
14 read this report, to know which person everyone's
15 talking about, that's how I refer to it. So no,
16 in no way am I trying to dehumanize anyone.

17 Q Thank you. Please continue if you remember where
18 you left off. I believe it was after the first
19 sentence in Paragraph 4.

20 A Okay. "P.O. Heaggan-Brown described the black
21 male as having a caramel complexion, braided hair,
22 and thin build. P.O. Heaggan-Brown stated the
23 black male ran north, then cut to the east towards
24 the sidewalk on the east side of North 44th
25 Street. P.O. Heaggan-Brown stated that he ran

1 after the black male and as he drew closer, he
2 began to bring his taser out of its holster. P.O.
3 Heaggan-Brown stated before he could get the taser
4 out of the holster, he heard P.O. Malafa yell from
5 behind him, quote, He has a gun, end quote. P.O.
6 Heaggan-Brown pushed the taser back into the
7 holster and made sure it clicked indicating that
8 it was locked in the holster. P.O. Heaggan-Brown
9 stated that he continued to pursue the black male
10 and pulled his pistol from the holster.

11 "P.O. Heaggan-Brown believed that P.O.
12 Malafa broadcast the description of the foot
13 pursuit of the black male. P.O. Heaggan-Brown
14 stated that the black male continued to cut east
15 and run toward the gangway between 3218 North 44th
16 Street and the house directly south. P.O.
17 Heaggan-Brown noted that he was gaining ground on
18 the black male and was approximately six or seven
19 feet behind and to the west of the black male.
20 P.O. Heaggan-Brown continued to gain on the black
21 male as the black male came to the gate of a
22 fence. P.O. Heaggan-Brown was yelling at the
23 black male but could not remember what he was
24 saying to him. P.O. Heaggan-Brown began to slow
25 down and was trying to stop his momentum towards

1 the black male.

2 "P.O. Heaggan-Brown stated that the
3 black male was stopped at the gate and did not
4 jump over the fence. P.O. Heaggan-Brown stated
5 that the top of the fence was even with the black
6 male's chest. P.O. Heaggan-Brown stated that P.O.
7 Malafa was positioned to the southwest of him and
8 he screamed, quote, Drop the gun, end quote. P.O.
9 Heaggan-Brown stated the black male had his back
10 to him, and his hands were resting on top of the
11 fence. P.O. Heaggan-Brown stated at this point he
12 could see the extended magazine of the pistol
13 protruding from the bottom of the black male's
14 right hand. P.O. Heaggan-Brown stated that he
15 could see also the slide of the pistol protruding
16 from the top of the black male's right hand. P.O.
17 Heaggan-Brown thought to himself that the black
18 male could have easily hopped the fence and
19 continued running if he would have dropped the gun
20 and emptied his right hand.

21 "P.O. Heaggan-Brown stated that P.O.
22 Malafa was on his right side and screamed, quote,
23 Drop the gun, put your hands up, end quote. P.O.
24 Heaggan-Brown stated the black male turned his
25 head to the right and looked at P.O.

1 Heaggan-Brown. P.O. Heaggan-Brown noted the black
2 male had a strange look on his face which reminded
3 him of numerous interviews he conducted of people
4 who were under the influence of drugs. P.O.
5 Heaggan-Brown stated that it seemed to him that
6 P.O. Malafa's commands to the black male to drop
7 the gun were not registering.

8 "P.O. Heaggan-Brown stated as the black
9 male turned his head and looked at P.O.
10 Heaggan-Brown, the black male's torso also moved
11 to the right in Heaggan-Brown's direction.
12 Heaggan-Brown believed the black male's right hand
13 was still holding the pistol and it was following
14 the same path as the male's head and torso,
15 towards P.O. Heaggan-Brown.

16 "P.O. Heaggan-Brown stated that he saw
17 the black male's right arm was bent at the elbow
18 and the pistol was at the black male's chest
19 level. P.O. Heaggan-Brown thought that the black
20 male was going to shoot him and P.O. Malafa since
21 he did not put the gun down and continued to run
22 but instead turns -- turned towards them with the
23 gun in his hand. P.O. Heaggan-Brown feared that
24 he or Officer Malafa would be killed or seriously
25 injured if the black male fired the gun at them.

1 P.O. Heaggan-Brown was approximately four to five
2 feet from the black male when he raised his duty
3 weapon and he fired it one time at the black
4 male's torso.

5 P.O. Heaggan-Brown stated that he aimed
6 at the black male's torso, or center mass, adding
7 that the black male had an extended magazine on
8 his weapon and was armed with more ammunition than
9 P.O. Heaggan-Brown. P.O. Heaggan-Brown stated
10 that he has never received training to shoot guns
11 out of people's hands or to shoot them in the arm
12 or leg. P.O. Heaggan-Brown further added that to
13 do so probably would not have kept the black male
14 from firing his weapon. P.O. Heaggan-Brown's
15 intention when he fired his duty weapon at the
16 black male was to stop his actions and prevent him
17 from shooting him and P.O. Malafa. P.O.
18 Heaggan-Brown stated that there was no one
19 standing behind the black male when P.O.
20 Heaggan-Brown fired his duty weapon at the black
21 male.

22 "P.O. Heaggan-Brown stated after he
23 fired his weapon the black male fell onto the
24 fence, and he believed the black male threw the
25 pistol over the fence with his right hand. The

1 black male stumbled and fell to the ground in a
2 supine position. P.O. Heaggan-Brown stated that
3 he was screaming for the black male to show his
4 hands but the black male moved his right hand
5 towards his waistband while still looking at P.O.
6 Heaggan-Brown. P.O. Heaggan-Brown feared that the
7 black male was reaching for a second gun hidden in
8 his waistband and he feared that the black male
9 would use it to shoot him or P.O. Malafa. P.O.
10 Heaggan-Brown stated that he fired his duty weapon
11 again at the black male's chest or center mass.

12 "P.O. Heaggan-Brown believed that the
13 amount of time that elapsed between his first and
14 second shots was less than three seconds.

15 "P.O. Heaggan-Brown stated after the
16 second shot, the black male laid his hands on the
17 ground by his sides. P.O. Heaggan-Brown stated
18 the black male was lying near a bee hive and his
19 face was getting covered by bees, so P.O.
20 Heaggan-Brown pulled him away from the bees.
21 Heaggan-Brown checked the black male's vital signs
22 and was unable to feel a pulse, so without waiting
23 for gloves, he began performing CPR on the black
24 male. P.O. Heaggan-Brown stated that he got stung
25 four or five times by bees so he yelled for

1 someone else to continue CPR. P.O. Heaggan-Brown
2 rose from the black male's side and saw a lady
3 walking to the back door of the house carrying
4 bags of groceries. P.O. Heaggan-Brown knew the
5 pistol was lying in the backyard near where she
6 was standing, so he yelled for her to get inside
7 her house. P.O. Heaggan-Brown then stated he told
8 P.O. Malafa to go stand by the pistol the black
9 male threw in the backyard.

10 "P.O. Heaggan-Brown radioed for medical
11 assistance for the black male and was standing in
12 the gangway when P.O. Tetzloff approached him and
13 walked him away from the scene to Tetzloff's
14 squad. P.O. Heaggan-Brown stayed there until he
15 was approached by Sergeant Pratchet, who escorted
16 him to Sergeant Pratchet's squad car. P.O.
17 Heaggan-Brown gave Sergeant Pratchet a public
18 safety statement.

19 "P.O. Heaggan-Brown stated that he had
20 no previous contacts with the dark vehicle. P.O.
21 Heaggan-Brown added that he did not know the black
22 male, and did not remember any previous contacts
23 with him. Prior to this incident, P.O. Brown" --
24 I'm sorry -- "P.O. Heaggan-Brown stated that he
25 had not been involved in any other

1 officer-involved shootings."

2 Q And just stop right at the moment. In those last
3 three paragraphs, did Officer Heaggan-Brown ever
4 indicate to you to your recollection whether he
5 had ever patted Mr. Sylville Smith down or whether
6 he had ever handcuffed him?

7 A No.

8 Q Thank you.

9 A "P.O. Heaggan-Brown had no further information
10 regarding this incident. This interview was
11 completed at 1:04 p.m."

12 Q And again, to the best of your recollection, so
13 it's about a two-hour period, it's obviously the
14 summary of this discussion is -- is shorter than
15 two hours, but this is -- this is in the context
16 of asking questions and allowing time for you to
17 make notes, and were there any breaks that were
18 taken that you recall?

19 A If there were, I don't recall, and if there were,
20 they weren't for very long.

21 Q And again, you had the opportunity to summarize
22 that, show that to Officer Heaggan-Brown, and he
23 had no additions or corrections to the information
24 that you've just provided?

25 A None.

1 MR. CHISHOLM: Thank you. I have no
2 other questions at this time.

3 THE COURT: Cross-examination.

4 MR. SMITH: Just briefly.

5 **CROSS-EXAMINATION**

6 BY MR. SMITH:

7 Q Good morning, Agent Gibbs.

8 A Good morning, sir.

9 Q This statement took place on August the 15th of
10 2016; is that correct?

11 A That's correct.

12 Q Two days after the event?

13 A That's correct.

14 Q And you had mentioned that the day prior to that,
15 on the 14th, that you had met with Officer Voden
16 and Officer Voden's attorneys; is that correct?

17 A That's correct.

18 Q And those attorneys were Attorneys Matthews and
19 Schwartz; is that right?

20 A Yes, sir, they were.

21 Q And as you understand it, those attorneys were
22 provided to the police officers, both Voden and
23 Heaggan-Brown, by the police union, correct?

24 A I believe so.

25 Q You did play the video twice for the attorneys,

1 correct?

2 A That's correct.

3 Q Each video twice for the attorneys, right?

4 A Yes, sir.

5 Q But that video was not shown to Mr. Heaggan-Brown
6 prior to him giving his statement?

7 A It was not.

8 Q With respect to the giving and the recording of
9 the statement, whether it was or was not, it was
10 the union lawyers, Attorneys Matthews and
11 Schwartz, that had indicated that they did not
12 want that statement recorded pursuant to their
13 practice concerning their union representation,
14 true?

15 A That's correct.

16 Q And finally, Mr. Heaggan-Brown answered your
17 questions that you posed to him, correct?

18 A Yes, he did.

19 Q And he was cooperative with you, true?

20 A Yes, he was.

21 MR. SMITH: Nothing further.

22 THE COURT: Redirect, please.

23 MR. CHISHOLM: Just briefly.

24 **REDIRECT EXAMINATION**

25 BY MR. CHISHOLM:

1 Q In your experience as a City of Milwaukee homicide
2 detective, as a lieutenant who was responsible for
3 homicide investigations, is it a routine practice
4 to allow suspects in a homicide to review evidence
5 from the police department, that the police
6 department's collected prior to allowing them or
7 having them make a statement?

8 A No.

9 Q And so this is -- this is an exception to that
10 practice in the context of an officer-involved
11 shooting?

12 A Yes.

13 MR. CHISHOLM: I don't have any other
14 questions. Thank you.

15 THE COURT: Anything else?

16 MR. SMITH: Nothing.

17 THE COURT: All right. Thank you. You
18 may step down.

19 (Witness excused.)

20 THE COURT: Next witness.

21 MR. LINDSAY: Your Honor, the State's
22 next witness will be Dr. Jessica Lelinski. Prior
23 to calling that witness, the State would move into
24 evidence Exhibit No. 73 which is a stipulation
25 signed by Mr. Chisholm, Mr. Smith, and

1 Mr. Heaggan-Brown. That stipulation reads as
2 follows: "The State of Wisconsin, by District
3 Attorney John T. Chisholm, and the defendant,
4 personally and by his attorney, Jonathan Smith,
5 hereby agree and stipulate that at or about 5 p.m.
6 on August 13th, 2016, Forensic Investigator
7 Crystal Green, an employee of the Milwaukee County
8 Medical Examiner's Office, arrived at 3216 North
9 44th Street in the city and county of Milwaukee.
10 There she examined the condition and took custody
11 of the body of the decedent, Sylville K. Smith.
12 Investigator Green facilitated the Milwaukee Fire
13 Department med unit's transportation of
14 Mr. Smith's body to the medical examiner's office.
15 The Milwaukee Fire Department's med unit was
16 escorted by the Wisconsin Department of Justice
17 Division of Criminal Investigation and arrived at
18 the medical examiner's office in the same
19 condition."

20 Dated today and signed by Mr. Chisholm,
21 Mr. Smith, and Mr. Heaggan-Brown.

22 THE COURT: All right. And is the
23 defense in agreement with this?

24 MR. SMITH: Yes, sir.

25 THE COURT: All right. Ladies and

1 gentlemen, this is agreed facts -- excuse me, and
2 you're to view those facts as conclusively proved.

3 MR. CHISHOLM: I'm sorry, just one
4 cleanup matter, Your Honor, and that would be if I
5 could move for Exhibit --

6 THE COURT: 53?

7 MR. CHISHOLM: -- 53.

8 THE COURT: Any objection?

9 MR. SMITH: No.

10 MR. CHISHOLM: Thank you.

11 (Exhibit 53 was received.)

12 THE COURT: Tanyia, now you get it.

13 THE CLERK: Thank you.

14 THE COURT: Is Dr. Lelinski ready to
15 go?

16 MR. LINDSAY: Dr. Lelinski is ready to
17 go and I call her to the stand.

18 THE COURT: All right. Raise your
19 right hand.

20 **JESSICA LELINSKI, M.D.**, called as a
21 witness herein, being first duly sworn, was
22 examined and testified as follows:

23 THE COURT: Have a seat, please. Tell
24 us your name; spell your first and last name.

25 THE WITNESS: Jessica Lelinski,